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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*Martin K. Kelly*

FILE: B-203527

DATE: March 10, 1982

MATTER OF: Robert E. Lawless

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- DIGEST:
1. There is no authority for a dependent to travel at Government expense to a service member's last duty station under his permanent change-of-station orders, where the sole purpose of the member's transfer is retirement processing and he has no intention of establishing a permanent home at or near the last duty station. A member is not entitled to have his dependents accompany him at Government expense on a temporary assignment for personal convenience to a place where they do not intend to establish a permanent home.
  2. The Government may not be bound by the erroneous acts or advice of its employees. The member's good-faith misunderstanding of advice which he obtained from the Finance and Accounting Officer at his post of duty prior to incurring excess transportation expenses does not furnish a basis for refund of the amount the Government collected for those excess expenses by means of deductions from the member's retired pay.

Mr. Robert E. Lawless has requested reconsideration of his claim, which was disallowed by our Claims Group, for dependent travel expenses incurred at the time of his retirement from the U.S. Army. For the reasons which follow, we affirm the Claims Group's disallowance of this claim.

Until March 31, 1979, Mr. Lawless was enlisted in the U.S. Army and stationed in Belgium. By a letter dated December 11, 1978, Mr. Lawless sought clarification from the Finance and Accounting Officer at his duty station concerning his entitlement to travel allowances for himself and his dependents on retirement. Based on the information he received, Mr. Lawless and his wife obtained Travel Requests in order to fly at Government expense from

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Belgium to the continental United States on March 26, 1979, for retirement processing. They remained in the United States until April 19, when they returned at Government expense, to Brussels, Belgium. On April 26, 1979, Mr. and Mrs. Lawless moved themselves from Belgium to Hyeres, France. Because Mr. Lawless designated Hyeres, France, as his home of selection, this latter move was also accomplished at Government expense.

On February 5, 1980, Mr. Lawless was advised by the Army that it had determined that he was indebted to the Government for excess travel expenses because his wife had not been entitled to travel at Government expense from Brussels to the United States and back when she had accompanied Mr. Lawless to the retirement processing station. Collection of \$422.24 was made from his retired pay. Mr. Lawless protested the collection action and stated that he had relied upon official advice to the contrary. In substantiation of this claim, Mr. Lawless provided a copy of the questions and answers which he had secured prior to taking that trip. He also stated that:

"Based on this [advice from the SHAPE Finance and Accounting Office] I decided to return to CONUS with my wife for retirement. Had it [the advice] been otherwise I probably would have left my wife in Europe."

Nonetheless, the Army concluded that Mr. Lawless was liable for the excess transportation costs and ordered deductions from his retired pay. Mr. Lawless appealed the Army's determination and deductions to our Claims Group which disallowed the claim on January 22, 1981.

Subsection 406(g) of title 37, United States Code, provides that under regulations prescribed by the Secretaries concerned, a member who is retired with pay is entitled to transportation for his dependents to the home of retirement selected under 37 U.S.C. 404(c). Implementing regulations set forth in paragraph M7010, Volume 1 of the Joint Travel Regulations (1 JTR), provide that a member on active duty will be entitled to transportation of dependents (transportation in kind, including

transportation requests, or a monetary allowance in lieu of transportation at the rates prescribed) "from his last permanent duty station, or the place to which they were last transported at Government expense," to the home selected by him when he is retired with pay.

However, under 37 U.S.C. 406(a) and (b), the entitlement of a member of a uniformed service who is ordered to make a change of permanent station to transportation for his dependents is subject to such conditions and limitations, and to and from such places, as may be prescribed by the Secretaries concerned. Implementing regulatory provisions of paragraph M7000, 1 JTR, provide in pertinent part as follows:

"Members of the Uniformed Services are entitled to transportation of dependents at Government expense upon a permanent change of station \* \* \* except:

\* \* \* \* \*

"13. for any travel of dependents between points otherwise authorized in this Volume to a place at which they do not intend to establish a residence; travel expense of dependents for pleasure trips or for purposes other than with intent to change the dependents' residence as authorized by this Volume may not be considered an obligation of the Government."

We have consistently held that under the applicable provisions of law and regulation there is ordinarily no authority for a dependent to travel at Government expense under permanent change-of-station orders to a member's last duty station where the purpose for his assignment is for separation processing, since such assignments are in fact temporary in nature. If a member's home of selection upon retirement is at the same location as his point of separation, his dependent may travel to that location for that purpose only under the member's permanent change-of-station orders, and in those limited circumstances the member may be reimbursed for such

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travel. However, if the dependent accompanies the member to his separation point, and their stay at that place does not exceed the span of an ordinary visit, vacation, or temporary duty assignment, and other facts in the case indicate that travel was for purposes other than to establish a permanent home, the conclusion is required that the travel was not to a bona fide residence. In that case there is no entitlement to dependent travel at Government expense. See 53 Comp. Gen. 44 (1973); B-192949, June 6, 1979; and B-195604, September 28, 1979.

Thus, in the circumstances presented, Mr. Lawless is only entitled to transportation of his dependents from his last duty station in Belgium to Hyeres, France, his home of selection. Mr. Lawless is not entitled to the transportation of his wife to and from the United States at Government expense at the time of his retirement processing. The Army is correct to charge these excess transportation expenses to him. Mr. Lawless argues that he should not be held liable for these expenses because he acted in good faith based on the advice which he obtained prior to traveling to the United States. Whether he interpreted the advice given in a reasonable manner is not in question because no authority exists for an official of the United States to authorize entitlements which are precluded from being paid by statute and regulation. It is well established that the Government is not bound by the erroneous acts or advice of its employees. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); United States v. Crance, 341 F.2d 161, 166 (8th Cir. 1965); Interstate Van Lines, Inc., - Reconsideration, B-190429, October 22, 1979.

Accordingly, while it is unfortunate that a misunderstanding did occur, no authority for the payment of the claim exists and the settlement of our Claims Group disallowing the claim must be sustained.

*Milton J. Fowler*  
for Comptroller General  
of the United States